

IN THE MATTER OF OCEAN OPERATOR'S LICENSE NO. 08637 AND
ALL OTHER LICENSES

Issued to: Frank W. Ewing

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1515

Frank W. Ewing

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 4 December 1963, an Examiner of the United States Coast Guard at Kona, Hawaii suspended Appellant's seaman licenses for one month outright plus three months on nine months' probation upon finding him guilty of negligence. The two specifications found proved allege that while serving as Operator on board the United States MB SEA GAZER under authority of the license above described, from 5 August through 13 August 1963, Appellant contributed to an explosion on the motorboat, which caused injuries and damage, by operating her with an unapproved repair or alteration to the main engine gasoline fuel line; and on 13 August 1963, Appellant operated the motorboat without carburetor drip collectors.

At the hearing held on 29 October 1963, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced in evidence documentary evidence as well as the testimony of the mechanic who made the fuel line repair or alteration, the manager of the SEA GAZER which was used for sightseeing cruises, and the Coast Guard inspector who went on board to investigate after the casualty.

Since the decision would not be rendered until a later date, Appellant testified in mitigating without conceding guilt. Appellant testified that he had been licensed since 1940 and had no prior record; despite severe burns, he put out the fire after the explosion and navigated the vessels which came to the rescue until all the passengers were safely ashore.

On 4 December 1963, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending Appellant's licenses and indicated above.

The excessive delay in rendering this decision is due to the fact that, although an appeal was timely filed, there was a

misunderstanding as to whether or not the appeal was subsequently withdrawn. As a result of this, counsel did not receive a copy of the hearing transcript until April 1965.

FINDINGS OF FACT

From 18 April through 13 August 1963, Appellant was serving as Operator on the United States MB SEA GAZER and acting under authority of his license. By contract with the owner, Appellant agreed to maintain, service and operate the SEA GAZER, a passenger-carrying, inspected motorboat of 14 gross tons and 42 feet long.

On 5 August 1963 without notice to the Office in Charge of Marine Inspection, Honolulu, a mechanic, hired by the motorboat's manager at Appellant's request, altered the main fuel line to the gasoline engine of the SEA GAZER, in order to stop a gasoline leak, by removing a fuel filter (believed to be causing the leak) from the copper tubing fuel line and connecting the two open ends of the fuel line (where the filter had been) by slipping the ends of a 2-1/2 inch long piece of unreinforced rubber hose over the open ends of the fuel line. Since the hose had no connection fitting attached to it, the mechanic wrapped plastic adhesive tape around the hose near the ends for the purpose of holding it in place over the ends of the fuel line. This was intended as a temporary alteration while the condition of the fuel filter was checked, repaired if necessary, and replaced on the fuel line.

Shortly after the mechanic finished working on the fuel line, Appellant arrived on board the SEA GAZER with passengers for a tour of Kealahou Bay, Hawaii Island. The mechanic told Appellant that a fuel filter had been removed and specified the location of the temporary connection in the fuel line. Appellant was not informed of the manner in which the fuel line had been connected and he did not inspect it. The mechanic stayed on board for about an hour and observed no leakage. When he departed with the fuel filter, there was no gasoline in the bilges.

Appellant operated the SEA GAZER with passengers on board on 5 August and every subsequent day through 13 August. During this time, the condition of the fuel line remained unchanged. Unknown to Appellant, the fuel filter was ready to be replaced on 7 August together with new connection fittings for the old ones which the mechanic assumed had been causing the leak since no defect in the fuel filter could be found.

The SEA GAZER was in Kealahou Bay on the morning of 13 August. Appellant started her engine after proper routine procedures had been completed. The motorboat had been under way, carrying 20 passengers, for a short time when, at about 1045, there was an explosion in the engine compartment where the fuel line was located. Although Appellant received the full blast of the explosion, he managed to activate the fixed CO2 system which put out the fire following explosion. Those on the SEA GAZER were removed to another motorboat and taken ashore. One passenger and Appellant were hospitalized. Five other persons were treated for less severe burns. Appellant was incapacitated for approximately 2-1/2 months.

Investigation after the casualty disclosed that the bilges were filled with gasoline, the adhesive tape which had been put around the rubber hose on the fuel line was unraveled, and the after end of the rubber hose had parted from the copper tubing fuel line leaving the fuel line open. There were no drip collectors under the dual updraft carburetors. The damage was estimated at \$500.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. The Examiner erred in finding that the mechanic informed Appellant as to the nature of the temporary repair or alteration of the fuel line. Appellant did not have actual or constructive knowledge of the latter. Arrangements with the mechanic were handled by the manager and Appellant placed reasonable reliance on these two persons to take care of the repairs.
2. The evidence shows that Appellant was not guilty of negligence as charged but was guilty of violation of regulations.

OPINION

According to the mechanic's testimony, he altered Appellant to the fact that some change had been made in the fuel line since the fuel filter had been taken off, but the mechanic stated that he did not tell Appellant of the nature of the temporary repair or alteration. To this extent, the contention on appeal is correct, but I do not agree that Appellant did not have constructive knowledge of what was done because, both in terms of his duties as the Operator in charge of a motorboat and his contract with the owner to take care of the maintenance on the SEA GAZER, Appellant did not exercise reasonable care when he failed to determine the manner in which such an important, and potentially dangerous, matter as a repair or alteration of the main gasoline fuel line had been effected.

The fuel line not only was essential to supply the means of power to the engine, but the gasoline carried in the fuel line was a highly explosive substance. Hence, anything of this nature would necessarily be considered a major repair or alteration requiring the approval of the Officer in Charge, Marine Inspection. 46 CFR 176.20-1. This is further indicated by the fact that all fuel systems on such vessels must be inspected to insure compliance with the required standards. 46 CFR 176.25-10(a)(5).

Appellant is presumed to have known the regulations since, in order to obtain his Ocean Operator's license, he was required to pass an examination covering, among other subjects, applicable rules and regulations pertaining to the operation of propelling machinery, particularly with respect to the safe handling of gasoline and gasoline engines. 46 CFR 187.25-15(a)(13)-(14). Therefore, it is assumed that Appellant was familiar with the regulation which states, in part, that a reasonable

length of hose may be used, in such a case as this, provided it is "adequately reinforced" and it is fitted with "proper connection fittings." 46 CFR 182.15-40(a)(2). As an inspection by Appellant would have disclosed, the record shows that the piece of hose used was not "reinforced" at all and it was not fitted with any connection fittings much less "proper" ones.

Obviously, the placing of tape around the hose to hold it on the two ends of the fuel line was a very poor substitute for the regulatory requirements and, therefore, was a very dangerous means of altering or repairing a gasoline fuel line. Based on six years' experience as an engineering inspector, the Coast Guard officer who testified at the hearing stated that this type of repair would definitely not have been approved by the Officer in Charge, Marine Inspection.

In the absence of any other explanation as to the cause of the explosion, the only reasonable inference is that the gasoline leaked from the faulty connection, vaporized and was caused to explode by the heat from the engine. Reasonable precautions by Appellant to see that the two open ends of the fuel line were properly connected with approved fittings, rather than relying on the manager and the mechanic to assume Appellant's responsibilities, would have prevented this casualty.

It is also reasonable to conclude that, on 13 August, there were no drip collectors for the updraft carburetors before the explosion since they were missing afterward. Drip collectors are required by regulation (46 CFR 182.15-7(a)) for all carburetors except the down draft type. It is not alleged that this contributed to the explosion.

The evidence is conflicting as to whether or not there was another fuel filter on the fuel line, as required by 46 CFR 182.15-40(b)(5), after the mechanic removed one.

Although Appellant's conduct was in violation of certain regulations, it also constituted negligence in that Appellant failed to act prudently, under the circumstances, with respect to the requirements of safety regulations which, as stated in Commandant's Appeal Decisions Nos. 1073 and 1093, are simply clear notice of the existing standards of care required in order to avoid being guilty of negligence.

ORDER

The order of the Examiner dated at Kona, Hawaii, on 4 December 1963, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 11th day of August 1965.

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